Affirmed — Judge Davis —

Affirmed Ch. Jus. State —

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES

No. ~~200.~~ 158

DELITE P. RIPLEY, ADMINISTRATRIX, AND JAMES SUTHERLAND, ADMINISTRATOR, OF THE ESTATE OF WILLIS J. RIPLEY, DECEASED, PLAINTIFFS IN ERROR,

vs.

THE RAILWAY PASSENGERS' ASSURANCE COMPANY OF HARTFORD, CONNECTICUT.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF MICHIGAN.

FILED NOVEMBER 21, 1871.

5 Cranch 335
Dec. D. 1892

SUPREME COURT OF THE UNITED STATES.

No. 390.

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1 UNITED STATES OF AMERICA, *ss:*

[SEAL.] The President of the United States to the honorable the judges of the circuit court of the United States for the western district of Michigan, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said circuit court before you, between Delite P. Ripley, administratrix, and James Sutherland, administrator of the estate of Willis J. Ripley, deceased, plaintiffs, and The Railway Passengers' Assurance Company, of Hartford, Connecticut, defendant, a manifest error hath happened, to the great damage of the said Delite P. Ripley, administratrix, and James Sutherland, administrator of the estate of Willis J. Ripley, deceased, plaintiffs,
2 as by their complaint appears: We, being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, on the first Monday of December next, in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right and according to the laws and custom of the United States should be done.

Witness the Honorable Salmon P. Chase, Chief Justice of the said Supreme Court of the United States, and the seal of the said circuit court of the 17th day of July, in the year of our Lord one thousand eight hundred and seventy-one.

ISAAC H. PARRISH,
Clerk of the Circuit Court of the United States.
Western District of Michigan.

Allowed by—

S. L. WITHEY,
U. S. Dist. Judge.

3 The United States of America to the Railway Passengers' Assurance Company, of Hartford, Connecticut, defendant, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington, on the first Monday of December next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the sixth judicial circuit and western district of Michigan, wherein Delite P. Ripley, administratrix, and James Sutherland, administrator of the estate of Willis J. Ripley, deceased, are plaintiffs in error, and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiffs in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Solomon L. Withey, judge of the district court of the United States for the westsrn district of Michigan, this 17th day of July, in the year of our Lord one thousand eight hundred and seventy-one.

S. L. WITHEY,
U. S. Dist. Judge.

4 On this ninth day of October, in the year of our Lord one thousand eight hundred and seventy-one, personally appeared W'm Ashley before me, the subscriber, Isaac H. Parrish, clerk of the circuit court of the United States for the western district of Michigan, and makes oath that he delivered a true copy of the within citation to Charles J. Walker, attorney for the defendant, The Railway Passengers' Assurance Company, by mailing the same to him at his place of residence, Detroit, Michigan.

W'M ASHLEY.

Sworn to and subscribed the 9th day of October, A. D. 1871. before me—

ISAAC H. PARRISH, *Clerk.*

5 In the Supreme Court of the United States, of the December term, A. D. 1871.

DELITE P. RIPLEY, ADMINISTRATRIX, AND James Sutherland, administrator of the estate of Willis J. Ripley, deceased, plaintiffs,
vs.
THE RAILWAY PASSENGERS' ASSURANCE Company, of Hartford, Connecticut, defendant.

Writ of error to the circuit court of the United States for the western district of Michigan.

For return and in answer to the foregoing writ of error, I have caused to be certified to the Supreme Court of the United States, the record and proceedings therein mentioned, being the record and proceedings hereunto annexed.

SOLOMON L. WITHEY, [SEAL.]
District Judge.

6 UNITED STATES OF AMERICA,
Western District of Michigan:

Be it remembered that, heretofore, to wit, on the 12th day of October, in the year of our Lord one thousand eight hundred and seventy, there was filed in the clerk's office of the circuit court of the United States for the sixth judicial circuit and western district of Michigan, a certain transcript from the records of the circuit court for the county of Kent, which is in the words and figures following, to wit:

7 STATE OF MICHIGAN,
Kent County, ss:

The circuit court for the county of Kent.

Delite P. Ripley, administratrix, and James Sutherland, administrator of all and singular the goods, chattels, and credits which were of Willis J. Ripley, deceased, at the time of his death, who died intestate, plaintiffs in this suit, by Ashley & Holbrook, their attorneys, come into court and file this their declaration, as commencement of suit against the Railway Passengers' Assurance Company, of Hartford, Conn., a corporation organized under the laws of the State of Connecticut, but

doing business within said county of Kent, defendant herein, of a plea of trespass on the case upon promises.

For that whereas, the said defendant, at Grand Haven, in the county of Ottawa, and State of Michigan, to wit, at the city of Grand Rapids, in said county of Kent, did, on the eighth day of May, A. D. 1869, for a valuable consideration in money paid it, the said defendant, by one Willis J. Ripley, in his lifetime, (now deceased,) make, execute, and deliver to him, the said deceased, a certain agreement, commonly called a policy of insurance, in the words and figures following, that is to say:

"*Railway Passengers' Assurance Co. of Hartford, Conn.*

"Station No. 1131. This ticket will be good for one day, commencing with date.

"H. T. SPERRY, *Sec'y.*"

8 "From 1 A. Not transferrable.

"TWENTY-FIVE CENTS.

"R. P. A. Co. 1869. 8 May. Station 1131.

"FIVE THOUSAND DOLLARS.

The Railway Passengers' Assurance Company, of Hartford, Conn., will indemnify the insured by this ticket, in the sum of twenty-five dollars per week, against loss of time not exceeding twenty-six consecutive weeks, while totally disabled and prevented from all kinds of business by reason of bodily injuries effected through violent & accidental means, or will pay the sum of 5,000 to his legal representatives in the event of death by means aforesaid, when resulting within ninety days from the happening of the accident.

Provided, that this insurance shall be payable only in the event of death or disability of the assured when caused by any accident while traveling by public or private conveyance in the United States or dominion of Canada.

Insurance on any one life is limited to $5,000 in case of death, and twenty-five dollars weekly indemnity in the event of disability, and no person holding more than one ticket or policy of this company will be entitled to recover in excess of that sum.

In the event of injury or death, immediate notice must be given to the home-office of the company. Females will be insured under this ticket against death only, and this insurance shall not extend to children under 14 years of age, nor to employers on public conveyances while on duty. The transfer of this ticket will forfeit all claims arising hereunder.

9 J. G. BATTERSON, *President.*

As a means of identification in case of fatal accident, the assured is required to write his name and residence below.

Name , residence .

And plaintiffs aver that the said Ripley did endorse said policy by writing his name and residence as provided therein. Plaintiffs further aver that, during the life of said policy, and on, to wit, the eighth day of

May, A. D. 1869 aforesaid, and while the said Willis J. Ripley was traveling by private conveyance to his home in the town of Dalton, in the county of Muskegon, in the State of Michigan, and within the United States, he was at said town of Dalton, to wit, at the city of Grand Rapids, in said county, set upon and waylaid, and by violent and accidental means, received then and there, bodily injuries, from the effects of which injuries, and on, to wit, the 15th day of May, A. D. 1869, and within ninety days from the time of such injuries, and at the place last aforesaid died.

And the said plaintiffs further aver, and in fact say, that, immediately after the death of Willis J. Ripley as aforesaid, and on or about the first day of June, A. D. 1869, notice of the death of the said Willis J. Ripley, was given to the home-office of the said defendant, to wit, in the county of Kent aforesaid, by means of which said premises, the said defendants became and are liable to pay the said plaintiffs, as such administratrix and administrator aforesaid, the sum of five thou-
10 sand dollars; and being so liable, in consideration thereof, the said defendants, on, to wit, the day and year, and at the county last aforesaid, undertook and faithfully promised the said plaintiffs, as such administratrix and administrator, to pay the them aforesaid sum of five thousand dollars when it, the said defendant, should be thereunto requested. Yet the said defendant, not regarding its said promises and undertakings, hath not as yet paid the said sum of money or any part thereof to the said plaintiffs, administratrix and administrator as aforesaid, (although often requested so to do,) but it so to do hath hitherto wholly refused and still refuses to pay the same or any part thereof to said plaintiffs, administratrix and administrator as aforesaid, to the damage of the said plaintiffs, as administratrix and administrator as aforesaid, of six thousand dollars; and therefore they bring suit, &c.

And the said plaintiffs bring into court here the letters of administration of all and singular the goods, chattels, and credits, which were of the said Willis J. Ripley, at the time of his death, and which letters were, after his death, granted to the said plaintiffs by the probate court of Muskegon County aforesaid, which give sufficient evidence to the said court here of the grant of administration to the said plaintiffs aforesaid.

And whereas also, the said defendant, on the 1st day of August, in the year of our Lord A. D. 1870, in the county aforesaid, was indebted to the said plaintiffs, as administratrix and administrator as
11 aforesaid, in the sum of six thousand dollars for money then and there lent by the said plaintiffs to the said defendant at its request.

And for six thousand dollars for money then and there paid by the said plaintiffs for the use of the said defendant at its request.

And in the sum of six thousand dollars for money then and there received by the said defendant for the use of said plaintiffs.

And in the further sum of six thousand dollars for interest due from the said defendant to the said plaintiffs, for and in respect of the said plaintiffs, having forborne and given day of payment of money due from the said defendant to the said plaintiffs at the said defendant's request for a long time then elapsed.

And in the further sum of six thousand dollars for money found to be due from said defendant to said plaintiffs, on an account then and there stated between them.

And whereas the defendant, afterwards, to wit, on the day and year last aforesaid, in the county aforesaid, in consideration of the premises

respectively, promised to pay the said several sums of money respectively to said *said* plaintiffs on request, yet it hath disregarded its promises, and hath not paid (although often requested, &c.,) any of the said several sums of money, or either of them, or any part thereof, to the plaintiffs' damage of six thousand dollars; and therefore they bring suit, &c.

ASHLEY & HOLBROOK,
Attorneys for Pl'ffs.

12 The Railway Passengers' Assurance Co., of Hartford, C't, defendant named in the within declaration, does hereby accept service (personal) of the declaration in this cause of which the within is a copy by receiving a copy inscribed as such, with notice to plead, &c., the same as is hereon endorsed.

Witness the signature of the pres't, J. G. Batterson, at Hartford, C't, this 13th day of Sept., A. D. 1870.

This acceptance of service to be no waiver of our right to transfer the cause to the Federal courts.

J. G. BATTERSON, *Pres't.*

13 STATE OF MICHIGAN:

The circuit court for the county of Kent.

DELITE P. RIPLEY, ADMINISTRATRIX, AND James Sutherland, administrator of the estate of Willis J. Ripley, deceased.
vs.
RAILWAY PASSENGERS' ASSURANCE COMPANY.

GENTLEMEN: Please take notice that we are retained as attorneys for the defendant in the above-entitled cause.

Dated Sept. 26th, 1870.

Yours, &c.

EGGLESTON & KLEINHANS,
Def't's Att'ys.

To Messrs. ASHLEY & HOLBROOK,
Pl'ffs' Att'ys.

14 STATE OF MICHIGAN, *Kent County, ss:*

The circuit court for the county of Kent.

DELITE P. RIPLEY, ADMINISTRATRIX, AND James Sutherland, administrator of the estate of Willis J. Ripley, deceased, plaintiffs,
vs.
THE RAILWAY PASSENGERS' ASSURANCE Company, of Hartford, Connecticut, defendant.

To Messrs. ASHLEY & HOLBROOK,
Attorneys for the Plaintiffs in the above-entitled cause:

Please to take notice that, on Friday morning September 26th, 1870, at the opening of court or as soon thereafter as counsel can be

heard, we shall apply to the court to remove the above-entitled cause into the next circuit court of the United States, to be held in and for the western district of Michigan; said application to be based upon a petition affidavit then to be filed in said cause, and copies whereof are hereunto annexed and served upon you, when and where you may attend if you see fit.

The Railway Passengers' Assurance Company.

By J. G. BATTERSON, *Pres't.*

We accept service of the above notice with copy of the petition, affidavit, and bond.

Dated Sept. 16, 1870.

ASHLEY & HOLBROOK,
Plff's Attorneys.

STATE OF MICHIGAN, *Kent County, ss:*

The circuit court for the county of Kent.

DELITE P. RIPLEY, ADMINISTRATRIX, AND James Sutherland, administrator of the estate of Willis J. Ripley, deceased, plaintiffs,
vs.
THE RAILWAY PASSENGERS' ASSURANCE Company, of Hartford, Conn., defendant.

STATE OF CONNECTICUT,
Hartford County, City of Hartford, ss:

To the circuit court for the county of Kent:

The Railway Passengers' Assurance Company, of Hartford Connecticut, represents to this honorable court that the plaintiffs in the above-entitled cause are each and both of them citizens and residents of the State of Michigan.

That the said defendant is a corporation organized under the laws of the State of Connecticut, and is for the purpose of this suit, a citizen of said State of Connecticut and a resident thereof.

That the matter in dispute in the above-entitled cause exceeds the sum of five hundred dollars, exclusive of costs; that the said defendant, your petitioner, has reason to believe and does verily believe that it will not be able to obtain justice in this court:

Wherefore the above-named defendant, your petitioner, prays that the above-entitled cause may be removed into the next circuit court of the United States, to be held in the western district of Michigan.

And your petitioner offers Chauncey Howard, esq., as surety for its entering, in the said United States court on the first day of its session, copies of all process, pleadings, and other proceedings in the above-entitled cause, and for its doing such other appropriate acts as are by law required to be done upon the removal of a suit into the United States court.

The Railway Passengers' Assurance Co.,

By J. G. BATTERSON, *Pres't.*

Subscribed and sworn to before me this 20th day of Sept., A. D. 1870.

17 STATE OF MICHIGAN, *Kent County, ss:*

The circuit court for the county of Kent.

THE RAILWAY PASSENGERS' ASSURANCE COMpany, of Hartford, Connecticut,
ads.
DELITE P. RIPLEY, ADMINISTRATRIX, AND James Sutherland, administrator of the estate of Willis J. Ripley, deceased.

STATE OF CONNECTICUT,
City & County of Hartford, ss:

James G. Batterson, of said county, being duly sworn, doth depose and say that he is president of The Railway Passengers' Assurance Company, of Hartford, Conn., defendant in this cause. Deponent further says that he has reason to believe and does believe that said defendant will not be able to obtain justice in said Kent County circuit court.

JAMES G. BATTERSON.

Subscribed and sworn to before me this 20th day of September, A. D. 1870.

18 Know all men by these presents that The Railway Passengers' Assurance Company, of Hartford, Connecticut, as principal, and Chauncey Howard, esq., as surety, are held and firmly bound unto Delite P. Ripley, administratrix, and James Sutherland, administrator of the estate of Willis J. Ripley, deceased, in the penal sum of five hundred dollars; for the payment of which, well and truly to be made, we bind ourselves, our and each of our heirs, jointly and severally, firmly by these presents, sealed with our seals, and dated this day of September, A. D. 1870.

Whereas the above-bounden Railway Passengers' Assurance Company have applied for the removal of a certain cause in assumpsit, commenced by declaration in the circuit court for the county of Kent, in which it is defendant, and the said Delite P. Ripley, administratrix, and James Sutherland, administrator of the estate of Willis J. Ripley, deceased, are plaintiffs, into the circuit court of the United States for the western district of Michigan: Now, therefore, the conditions of this obligation are such, that if the above-bounden insurance company, defendant, shall, on or before the first day of the session of the said United States circuit court next after the making of an order by the said Kent County circuit court, allowing the removal of said action into the said United States circuit court, copies of all process, pleadings, and other proceedings in said suit, and shall do all such other appropriate acts as are by law required to be done upon the removal of a suit into the said United States circuit court, then this obligation to be void; otherwise to remain in full force and effect.

The Railway Passengers' Assurance Co.,
By J. G. BATTERSON, *Pres't.* [SEAL.]
CHAUNCEY HOWARD. [SEAL.]

[50 U. S. rev. stamp.]

19 At a general term of the circuit court for the county of Kent, holden at the court-room in the city of Grand Rapids, on the 26th day of September, A. D. 1870.

Present, Hon. Louis S. Lovell, circuit judge.

DELITE P. RIPLEY, ADMINISTRATRIX, AND James Sutherland, administrator, pl'ffs,
vs.
THE RAILWAY PASSENGERS' ASSURANCE Company, def't.
} In assumpsit.

In this cause, on reading and filing the petition of the said defendant, together with its affidavits, and the said defendant having furnished sufficient surety, all in accordance with the provisions of the act of Congress respecting the removal of civil actions from State courts to the circuit court of the United States, and, on motion of said defendant:

It is ordered by this court now here that this cause be, and the same is hereby, removed to the circuit court of the United States for the sixth circuit and western district of Michigan, in pursuance of the act of Congress in such case made and provided.

LOUIS S. LOVELL,
Circuit Judge.

20 STATE OF MICHIGAN, *County of Kent, ss:*

I, Daniel McNaughton, clerk of the circuit court for the said county of Kent, hereby certify that the above and foregoing is a true and compared transcript of all the papers, records, and proceedings in a certain cause lately pending in said court, and of the whole of the proceedings therein, wherein Delite P. Ripley, administratrix, and James Sutherland, administrator of estate of Willis J. Ripley, deceased, are plaintiffs, and the Railway Passengers' Assurance Company, of Hartford, Conn., is defendant, as the same appears from the records and files of my office.

CIRCUIT COURT, KENT COUNTY, SEAL. } Witness my hand and the seal of said court this 12th day of October, A. D. 1870.

D. MCNAUGHTON, *Clerk.*

21 Pleas in the circuit court of the United States for the western district of Michigan, before the Honorable Solomon L. Withey, district judge, and on the twelfth day of December, in the year of our Lord one thousand eight hundred and seventy, and of the independance of the United States the ninety-fifth year.

ISAAC H. PARRISH, *Clerk.*

22 And, thereupon, to wit, on the 12th day of October, 1870, came the said defendant, by its said president, and filed a plea to said declaration, which is in the words and figures following, to wit:

United States circuit court, western district of Michigan.

Cause transferred from the circuit court of Kent County, in said district.

DELITE P. RIPLEY, ADM'X, AND JAMES SUTHerland, adm'r estate of Willis J. Ripley, deceased, plaintiffs,
vs.
THE RAILWAY PASSENGERS' ASSURANCE Company, defendant.

The Railway Passengers' Assurance Company, defendant above named,

in its own proper person, comes into court and demands a trial of the matters set forth in the plaintiff's declaration.

The Railway Passengers' Assurance Co.

By J. G. BATTERSON, *Pres't.*

23 And afterwards, to wit, on the 12th day of December, 1870, a stipulation was filed in said cause which is in the words and figures following, to wit:

IN THE CAUSE OF DELITE P. RIPLEY, adm'x et al,
vs.
THE RAILWAY PASSENGERS' ASSURANCE Co.

It is hereby stipulated that either party to this suit may take the case from the jury to the court for advice as to questions of law upon the conceded facts.

ASHLEY & HOLBROOK,
Att'ys for Pl'ffs.

The Railway Passengers' Assurance Co.
By JAMES G. BATTERSON,
President.

24 At a session of the circuit court of the United States for the sixth judicial circuit and western district of Michigan, continued and held at the city of Grand Rapids, on Monday, the 12th day of December, in the year of our Lord one thousand eight hundred & seventy.

Present, the Honorable Solomon L. Withey, district judge.

DELITE P. RIPLEY, ADMINISTRATRIX, AND James Sutherland, administrator of the estate of Willis J. Ripley, deceased,
vs.
THE RAILWAY PASSENGERS' ASSURANCE Company.

This cause having been heretofore tried and submitted to the court, and the court having fully considered the premises, find that the said defendant did not undertake and promise in manner and form as the said plaintiff hath in his declaration in this cause complained against him; therefore it is considered that the said plaintiffs take nothing by their suit, and that the said defendant go thereof without day.

And it is further considered that the said defendant do recover against the said plaintiff his costs and charges by him about his defence in this behalf expended, to be taxed; and that the said defendant have execution thereof.

25 *Decision of Hon. S. L. Withey, judge of the U. S. district court, western district of Michigan, rendered Monday, December 13th, 1870.*

IN THE CASE OF DELITE P. RIPLEY, ADMINISTRATRIX, and James Sutherland, administrator of the estate of Willis J. Ripley, deceased,
vs.
THE RAILWAY PASSENGERS' ASSURANCE COMPANY of Hartford, Conn.

The Railway Passengers' Assurance Company, of Hartford, Connecti-

cut, issued to W. J. Ripley, May 8th, 1869, a policy or ticket of insurance, the terms of which are as follows: "The Railway Passengers' Assurance Company, of Hartford, Connecticut, will indemnify the insured by this ticket, in the sum of twenty-five dollars per week, against loss of time, not exceeding twenty-six consecutive weeks, while totally disabled and prevented from all kinds of business, by reason of bodily injuries, effected from violent and accidental means, or will pay the sum of five thousand dollars to his legal representatives, in the event of his death, by means aforesaid, when resulting within ninety days from the happening of the accident, provided that this insurance shall be payable, only in the event of death or disability of the assured, when caused by any accident when travelling by public or private conveyance in the United States or Dominion of Canada.

This ticket was issued at Grand Haven, Ottawa County, Michigan, to Ripley, who at once set out for his home at Dalton, in Muskegon County, taking conveyance by steamer from Grand Haven to Muskegon
26 Village, where he arrived at eleven o'clock at night. From thence he proceeded on foot towards Dalton, a distance of some eight miles. When about half the distance, and at about half-past twelve o'clock of the morning of the ninth, he was met on the highway by two men who set upon and waylaid him; he was rendered insensible, robbed of a watch and small sum of money, but revived, and succeeded in reaching his home at about two and a-half (2½) o'clock of the same morning. He died from the effects of the injuries thus received on the sixth day, namely, on the 15th day of May.

There are two questions to be determined by the court, the case having been tried by stipulation without a jury, namely, was Ripley traveling by private conveyance; and were the injuries which he received, and from which he died, effected by violent and accidental means. There was at the time when Ripley started on foot from the village of Muskegon, no public conveyance by which he could go to Dalton. But he could have procured a team to take him home. Ripley was accustomed to travel on foot between the two points, except when he chanced to get a ride in some passing conveyance.

The plaintiffs' counsel contend, that policies of insurance are construed liberally in favor of the insured party, and strongly against the insurers. That in one sense, traveling on foot is traveling by private conveyance, and that this contract of insurance should be held to cover any mode of conveyance which accomplishes the transit of the person. That the term private conveyance, used as a compound word, has no precise or definite meaning, while the word "private" pertains to persons, and the word "conveyance" to any means by which persons or things are
27 transported. Hence, self locomotion is strictly private conveyance. And finally, that the terms of the policy are "traveling by," not "traveling in" private or public conveyance.

In reference to the second question, the plaintiff contends that the injuries received by the deceased were effected by violent and accidental means, inasmuch as there was force, without the agency or design of the injured party. The violence received was not intended by him, was not foreseen, and therefore was accidental.

It is as though two men had thrown a train of cars off the track, and Ripley had been killed. As to Ripley it would be an accident, though the perpetrators had designed to do it. On the other hand, the defendant's counsel contend, first, that contracts of insurance are to be construed like any other contracts, according to the ordinary sense and meanings of the terms employed, unless where the terms are used in a special sense.

The terms private or public conveyance, have no meaning in this policy except the ordinary import of the words.

They import traveling by some vehicle or instrument of conveyance other than the legs of a man walking and carrying his own body, as by car, vessel, stage, or by one's own, or another's team. If a man is carried on another man's back, while possibly it would be held to be traveling by private conveyance, yet, counsel for the defendants contends, that it would be a forced and unnatural construction to say, that a man who travels on foot is traveling by private conveyance. And secondly, he contends that by the terms of the ticket of insurance, the injury must have been effected by violent and accidental means. If the violence is intentional, it is not accidental. The men who set upon and waylaid Ripley intended violence, which violence resulted in murder,
28 and murder is not an accident.

Drowning, when not the result of design, is an accident, while sun-stroke has been held not to be an accident, but a result of natural causes. (3d Ellis and Ellis, 478, cited by counsel.) He also contends that a man traveling in a railroad car, though set upon and murdered, does not die of accident. This is violence, but not accident. A man thus traveling cuts his own throat, and dies; this is no accident; whereas, if he casually cuts himself while taking his lunch, and dies of the wound, it is accident, but there is no violence. Violent and accidental are terms synonymous with accidental violence. (17th Common Bench, new series, 122; 34th Conn, 574, cited by counsel.) Such are substantially the views urged by counsel. The policy or ticket of insurance issued to Ripley is not a general accident policy. It is confined to injuries effected by violent and accidental means while traveling by private or public conveyance. It is to be construed like other contracts, according to the sense in which the parties are supposed to have understood it at the time it was entered into, and they will be presumed to have understood its terms, in the sense that men of ordinary intelligence ought to have understood it. This is arrived at by giving to the terms used their most comprehensive popular meaning. It is a rule applicable to insurance and other contracts, that they are to be construed most strongly against the party making the promise. But this rule does not go so far as to authorize a construction against the promisor merely because that view is possible. On the contrary, in the absence of anything to show that the terms of such contract are intended to be understood in a particular or special sense, courts will go no farther than to hold the promisor liable to the extent which the other party had
29 a right to understand, from the terms of the instrument, when viewed in their ordinary and commonly received acceptation. The question is not how did Ripley understand the company's promises, but how ought he to have understood them? And so as to the company, how ought it to have understood its undertakings expressed in this policy? If the language of the contract shall thus be interpreted, in legal acceptation, we shall have made it speak the true intent of the parties. The rules I have laid down are not in the exact language of the books, but are, nevertheless, drawn from text-writers and decisions of the courts, on the subject of the construction of contracts, and are believed to be substantially correct. Now, when the term private conveyance is used, as in this policy, to indicate a mode of traveling, its ordinary popular acceptation means a vehicle or instrument of conveyance other and different from the person or thing to be conveyed. It will not answer any just rule of construction to hold that in one sense it is possible to say that a man walking on foot is a private conveyance for him-

self, and therefore such must be its interpretation. The ordinary import of the language, and not the possible import, must control. My opinion is, therefore, wholly with the defendant on this question, and defeats a recovery by the plaintiff.

If the case was to turn upon the other question, namely, whether the injuries received by Ripley were effected by any violent and accidental means, I should apply the same general rule of construction, and hold the company liable, in accordance with what I regard as embraced within the meaning of the words "any accidental means," taking
30 them in their most comprehensive, popular acceptation. The injuries were effected by violence, but was there any accident? Mr. Webster defines accident to be an event that takes place without one's foresight or expectation—an event which proceeds from an unknown cause, that is, an unusual effect of a known cause, and therefore not expected—chance; casualty; contingency; unexpectedly happening by chance; unexpectedly taking place; not according to the usual course of things. Perhaps, in a strict sense, any event which is brought about by design of any person, is not an accident, because that which has accomplished their intention and design, and is expected, is a foreseen and foreknown result, and, therefore, not strictly accident. Yet I am persuaded this contract should not be interpreted so as thus to limit its meaning, for the event took place unexpectedly, and without design on Ripley's part. It was to him a casualty, and in the more popular and common acceptation of the word "accident," if not in its precise meaning, includes any event which takes place without the foresight or expectation of the person acted upon or affected by the event. A man goes to a livery for a horse and carriage, and is given one; but the horse is sure to run away if he is driven; this the livery man knows—the hirer does not. The horse is taken, driven, and runs away, injuring the hirer. Now the event was foreseen and expected by the owner of the horse, but unforeseen and unexpected to the hirer; and, therefore, it seems to me it was accidental to him, and, within view of this policy, would be regarded as an accident. A man throws a train of cars off the track, and one
31 or more passengers are injured or killed. To those in the cars, it is an accident, a casualty, while in the exact sense, murder is not an accident. I still think, in construing a policy of insurance against accident, issued to all sorts of people, a majority of whom do not, as the company well know, nicely weigh the meaning of the words and terms used in it, courts are called upon to interpret the contract, as a large class, not versed in lexicology, are sure to regard its terms and scope. That which occurs to them unexpectedly is, by them, called accident. The company fix the terms of this contract, and are to be held, in the absence of plain and unequivocal exceptions and provisos, to intend what, in popular acceptation, the insured party is likely to understand by the terms. This question, is not, perhaps, entirely free from doubt. I find no case in which the exact point has been decided; but it does not become as material in this case as though the rights of the parties turned upon it.

The conclusion at which I have arrived on the other question, defeats the right of the plaintiff to recover, and judgment is accordingly given for the defendant.

32 And thereupon, afterwards, to wit, on the 13th day of December, A. D. 1870, the said plaintiffs, by their attorney aforesaid, came and filed exceptions to the said findings and judgment of the court, in the words and figures following, to wit:

33 UNITED STATES OF AMERICA:

The circuit court of the United States for the sixth circuit and western district of Michigan.

DELITE P. RIPLEY, ADMINISTRATRIX, AND James Sutherland, administrator, of the estate of Willis J. Ripley, deceased, plaintiffs,
vs.
THE RAILWAY PASSENGERS' ASSURANCE COMpany, defendant.
} December 13th, 1870.

The plaintiffs in the above-entitled cause excepts to the finding of the court therein, in this, that the court erred in deciding in substance that said defendant was not liable on the contract of insurance declared upon in that the said Willis J. Ripley, (deceased,) was on foot walking at the time he received the accidental injuries which caused his death, instead of riding or being transported—

Whereas the plaintiffs insist that, within the meaning of the contract declared upon, the said Ripley was "traveling by public or private conveyance," and that defendant is liable, &c.

W'M ASHLEY,
Att'y for Plaintiffs.
For ASHLEY & HOLBROOK.

34 The circuit court of the United States for the sixth circuit and western district of Michigan.

DELITE P. RIPLEY, ADMINISTRATRIX, AND James Sutherland, administrator of, &c., Willis J. Ripley, deceased,
vs.
THE RAILWAY PASSENGERS' ASSURANCE COMpany of Hartford, Connecticut.

Afterwards, to wit, at a circuit court of the United States for the sixth circuit and western district of Michigan, held at the court-house in the city of Grand Rapids, in and for said circuit and district, on the 13th day of December, A. D. 1870, before Solomon L. Withey, esq., district judge, sitting and holding said court as circuit judge of said circuit, according to the form of the statute in such case made and provided, the aforesaid issue so joined between the said parties as aforesaid come on to be tried by the said court without a jury, pursuant to agreement of the respective parties, then before the court by their counsel respectively. At which said day came then, as well the said plaintiffs as the said defendant, by their respective attorneys aforesaid, before the said court for the trial of the said issue, and the court then and there heard the proofs and allegations of the said parties, and tried the said issue so as aforesaid joined between them.

And, upon the trial of that issue, the counsel for the said plaintiffs, to maintain and prove the said issue on their part, did prove and
35 establish the facts found and determined by the said court in the opinion and finding of the said court hereinafter set forth. And, upon the said trial, the counsel for the said defendants, to maintain and prove the said issue on its part, did also prove and establish the facts found and determined by the said court in the said opinion and finding of the said court hereinafter set forth.

Whereupon the said counsel for the said plaintiffs did then and there, on behalf of the said plaintiffs, insist before the said court that the said matters so proven and found by the said court in its said opinion and findings, were sufficient, and ought to be allowed to entitle the said plaintiffs to judgment on said issue between them and the said defendant so joined as aforesaid.

And the said counsel for the said plaintiffs did then and there pray the said court to admit and allow the said matters so proven and found as aforesaid in the said opinion and finding of the said court as aforesaid to be conclusive in favor of the said plaintiffs and to entitle them to the judgment of the court in this cause, but to this the said counsel for the said defendant did then and there object, and insist before the said court that the said matters so proven and found as aforesaid in the said opinion and finding of the said court as aforesaid were not sufficient, and ought not to be allowed to entitle the said plaintiffs to the judgment of the court in this cause, but that the said matters so proven and found as aforesaid were sufficient, and ought to be allowed to bar the said plaintiffs of their action aforesaid.

36 And the said court did then and there declare and deliver its opinion and finding of the facts proven in the said cause, and of the law arising thereupon, as follows, viz:

"DELITE P. RIPLEY, ADMINISTRATRIX, AND James Sutherland, administrator of the estate of Willis J. Ripley, deceased,
"*vs.*
"THE RAILWAY PASSENGERS' ASSURANCE Company, of Hartford, Conn.

"The Railway Passengers' Assurance Company, of Hartford, Connecticut, issued to W. J. Ripley, May 8th, 1869, a policy or ticket of insurance, the terms of which are as follows:

"'The Railway Passengers' Assurance Company, of Hartford, Connecticut, will indemnify the assured by this ticket in the sum of twenty-five dollars per week against loss of time, not exceeding twenty-six consecutive weeks, while totally disabled and prevented from all kinds of business by reason of bodily injuries effected from violent and accidental means, or will pay the sum of five thousand dollars to his legal representatives in the event of his death by means aforesaid when resulting within ninety days from the happening of the accident: provided, that this insurance shall be payable only in the event of death or derisability of the assured when caused by any accident while traveling by public or private conveyance in the United States or dominion of Canada.'

"The ticket was issued at Grand Haven, Ottawa County, Mich-
37 igan, to Ripley, who at once set out for his home at Dalton, in Muskegon County, taking conveyance by steamer from Grand Haven to Muskegon village, where he arrived at eleven o'clock at night. From thence he proceeded on foot towards Dalton, a distance of some eight miles. When about half the distance, and at about half past twelve o'clock of the morning of the ninth, he was met on the highway by two men, who set upon and waylaid him; he was rendered insensible, robbed of a watch and a small sum of money, but revived and succeeded in reaching his home at about two and a half (2½) o'clock of the same morning.

"He died from the effects of the injuries thus received on the sixth

day, namely, on the 15th day of May. There are two questions to be determined by the court, the case having been tried by stipulation without a jury, namely, was Ripley traveling by public or private conveyance, and were the injuries which he received, and from which he died, effected by violent and accidental means? There was, at the time when Ripley started on foot from the village of Muskegon, no public conveyance by which he could go to Dalton, but he could have procured a team to take him home. Ripley was accustomed to travel on foot between the two points, except when he chanced to get a ride in some passing conveyance.

"The plaintiffs' counsel contend that policies of insurance are construed liberally in favor of the insured party, and strongly against the insurers; that, in one sense, traveling on foot is traveling by private conveyance, and that this contract of insurance should be held to cover any mode of conveyance which accomplished the transit of the
38 person; that the term 'private conveyance,' used as a compound word, has no precise or definite meaning, while the word 'private' pertains to persons, and the word 'conveyance' to any means by which persons or things are transported. Hence self-locomotion is, strictly, private conveyance; and, finally, that the terms of the policy are 'traveling by,' not 'traveling in,' private or public conveyance.

"In reference to the second question, the plaintiff contends that the injuries received by the deceased were 'effected by a violent and accidental means,' inasmuch as there was force without the agency or design of the injured party. The violence received was not intended by him—was not foreseen, and therefore was accidental. It is as though two men had thrown a train of cars off the track, and Ripley had been killed. As to Ripley, it would be an accident, though the perpetrators had designed to do it. On the other hand, the defendant's counsel contend, first, that contracts of insurance are to be construed like any other contracts, according to the ordinary sense and meanings of the terms employed, unless where the terms are used in a special sense.

"The term' private or public conveyance have no meaning in this policy except the ordinary import of the words. They impart traveling by some vehicle or instrument of conveyance other than the legs of a man, walking and carrying his own body, as by car, vessel, stage, or by one's own or another team. If a man is carried on another man's back, while possibly it would be held to be traveling by private conveyance, yet counsel for the defendant contends that it would be a forced and unnatural construction to say that a man who travels on foot is traveling by private conveyance.

39 "And secondly, he contends that, by the terms of the ticket of insurance, the injury must have been effected by violent and accidental means. If the violence is intentional, it is not accidental. The men who set upon and waylay Ripley intended violence, which violence resulted in murder, and murder is not an accident.

"Drowning, when not the result of design, is an accident, while sunstroke has been held not to be an accident, but a result of natural causes. (3d Ellis and Ellis, 478, cited by counsel.) He also contends that a man traveling in a railroad car, though set upon and murdered, does not die of accident. This is a violence, but not accident. A man thus traveling cuts his own throat, and dies; this is no accident. Whereas, if he casually cuts himself while taking his lunch and dies of the wound, it is accident; but there is no violence. Violent and accidental are terms synonymous with accidental violence. (17th Common Bench, new series, 122; 34th Conn., 574, cited by counsel.)

"Such are substantially the views urged by the counsel. The policy or ticket of insurance issued to Ripley is not a general accident policy. It is confined to injuries effected by violent and accidental means while traveling by private or public conveyance. It is to be construed like other contracts, according to the sense in which the parties are supposed to have understood it at the time it was entered into, and they will be presumed to have understood its terms in the sense that men of ordinary intelligence ought to have understood it. This is arrived at by giving to the terms used their most comprehensive, popular meaning."

"It is a rule, applicable to insurance and other contracts, that
40 they are to be construed most strongly against the party making the promise.

"But this rule does not go so far as to authorize a construction against the promisor, merely because that view is possible. On the contrary, in the absence of anything to show that the terms of such contracts are intended to be understood in a particular or special sense, courts will go no far' than to hold the promissor liable to the extent which the other party had a right to understand from the terms of the instrument, when viewed in their ordinary and commonly received acceptation. The question is not how did Ripley understand the company's promises, but how ought he to have understood them? And so as to the company, how ought it to have understood its undertakings expressed in this policy? If the language of the contract shall thus be interpreted in legal acceptation, we shall have made it speak the true intent of the parties. The rules I have laid down are not in the exact language of the books, but are, nevertheless, drawn from text writers and decisions of the courts on the subject of the construction of contracts, and are believed to be substantially correct. Now, when the term private conveyance is used, as in this policy, to indicate a mode of traveling, its ordinary popular acceptation means a vehicle or instrument of conveyance other and different from the person or thing to be conveyed. It will not answer any just rule of construction, to hold that in one sense it is possible to say that a man walking on foot is a private conveyance for himself, and therefore such must be its interpretation. The ordinary import of its language and not the possible import must control.
41 My opinion therefore is wholly with the defendant on this question, and defeats a recovery by the plaintiff.

"If the case was to turn upon the other question, namely, whether the injuries received by Ripley were effected by any violent and accidental means, I should apply the same general rule of construction, and hold the company liable, in accordance with what I regard as embraced within the meaning of the words 'any accidental means,' taking them in their most comprehensive, popular acceptation. The injuries were effected by violence, but was there any accident? Mr. Webster defines accident to be an event that takes place without one' foresights or expectation—an even' which proceeds from an unknown cause, that is, an unusual effect of a known cause, and therefore not expected—chance; casualty; contingency; unexpectedly happening by chance; unexpectedly taking place; not according to the usual course of things. Perhaps, in a strict sense, any event which is brought about by design of any person is not an accident, because that which has accomplished their intention and design, and is expected, is a foreseen and foreknown result, and therefore not strictly accident. Yet, I am pursuaded this contract should not be interpreted so as thus to limit its meaning, for the event took place unexpectedly and without design on Ripley's part. It was to him a casualty, and, in the more popular and common acceptation of the word

'accident,' if not in its precise meaning, includes any event which takes place without the foresight or expectation of the person acted
42 upon or affected by the event. A man goes to a livery for a horse and carriage and is given one. But the horse is sure to run away if he is driven. This the livery man knows; the hirer does not. The horse is taken, driven, and runs away, injuring the hirer. Now the event was foreseen and expected by the owner of the horse, but unforseen and unexpected to the hirer, and, therefore, it seems to me it was accidental to him, and within view of this policy would be regarded an accident. A man throws a train of cars off the track, and one or more passengers are injured or killed. To those in the cars it is an accident, a casualty, while in the exact sense murder is not an accident. I still think, in construing a policy of insurance against accident, issued to all sorts of people, a majority of whom do not, as the company well know, nicely weigh the meaning of words and terms—of the words and terms used in it—courts are called upon to interpret the contract, as a large class, not versed in lexicology, are sure to regard its terms and scope. That which occurs to them unexpectedly is by them called accident. The company fix the terms of this contract, and are to be held, in the absence of plain and unequivocal exceptions and provisos, to extend what popular acceptation the insured party is likely to understand by the terms. This question is not perhaps entirely free from doubt. I find no case in which the exact point has been decided, but it does not become as material in this case as though the rights of the parties turned upon it. The conclusion at which I have arrived on the
43 other question defeats the right of the plaintiff to recover, and judgment is accordingly given for the defendant."

And the said court did then and there declare and deliver its opinion upon the said matters aforesaid that the said matters, so proven and found as aforesaid, were not sufficient to entitle the said plaintiff to the judgment of the court in this cause; but that the said matters, so proven and found as aforesaid, were sufficient to bar the said plaintiffs of their action aforesaid.

Whereupon the said counsel for the said plaintiffs did then and there, on behalf of the said plaintiffs, except to the aforesaid opinion and decision of the said court, and insisted on the said matters so proven and found as aforesaid as sufficient to sustain said action on the part of the said plaintiffs, and to entitle them to the judgment of the said court.

And the said counsel for the said plaintiffs did then and there, in behalf of the said plaintiffs, make and file their exceptions to the said decision of the said court aforesaid, as follows, viz:

"UNITED STATES OF AMERICA:

"The circuit court of the United States for the sixth circuit and western district of Michigan.

"DELITE P. RIPLEY, ADMINISTRATRIX, AND James Sutherland, administrator of the estate of Willis J. Ripley, deceased, plaintiff,
vs.
"THE RAILWAY PASSENGERS' ASSURANCE COMpany, defendant.

44 "The plaintiffs in the above-entitled cause excepts to the finding of the court therein in this:

"That the court erred in deciding in substance that said defendant

was not liable on the contract of insurance declared upon in that the said Willis J. Ripley, deceased, was on foot walking at the time he received the accidental injuries which caused his death, instead of riding or being transported.

"Whereas the plaintiffs insist that, within the meaning of the contract declared upon, the said Ripley was 'traveling by public or private conveyance,' and that defendant is liable, &c.

"W'M ASHLEY,
Att'y for Plaintiff.
"For ASHLEY & HOLBROOK."

And thereupon the said court did then and there give judgment for the said defendant; and, inasmuch as the said matters so proven and found as aforesaid, and insisted on by the said counsel for the said plaintiffs as aforesaid, together with the exception of the plaintiffs aforesaid, do not appear by the record, the said counsel for the said plaintiffs did then and there propose their said exception to the opinion of the said judge, and requested him to put his seal to this bill of exceptions according to the form of the statute in such case made and provided.

The foregoing bill of exceptions not being prepared & presented to the said judge until after the expiration of the term when said case was tried, no time having been granted within which to present and settle the same, the defendant now objects to the allowing and signing
45 the said bill of exceptions upon the ground that it is too to settle and sign same.

And thereupon the said judge, at the request of the said counsel for the said plaintiffs, did put his seal to this bill of exceptions, on the 13th day of July, A. D. 1871, subject to the objections made as aforesaid by the counsel for the defendant.

S. L. WITHEY,
U. S. Dist. Judge.

46 Afterwards, to wit, on the 31st day of August, A. D. 1871, the following assignment of errors was filed:

47 UNITED STATES OF AMERICA:

Supreme Court of the United States, of the December term, 1871.

DELITE P. RIPLEY, ADMINISTRATRIX, & James Sutherland, administrator of, &c., of Willis J. Ripley, deceased, plaintiffs in error,
vs.
THE RAILWAY PASSENGERS' ASSURANCE Company, of Hartford, Connecticut, defendant in error.

Afterwards, to wit, on the first day in this same term of December, A. D. 1871, before the Supreme Court of the United States, at the Supreme Court room, in the city of Washington, come the said Delite P. Ripley, administratrix, & James Sutherland, administrator of, &c., of Willis J. Ripley, deceased, by Anthony Pollok, their attorney, and say that, in the record & proceedings aforesaid, & also in giving the judgement aforesaid, there is manifest error in this, to wit, that the said circuit court of the United States for the sixth circuit & western district
48 of Michigan, held & decided that, upon the facts of the case as found by the said court as aforesaid, the said defendant, as matter of law, was not liable to the said plaintiffs on the contract of insu-

rance declared on, for the reason that the said insured, Willis J. Ripley, deceased, was on foot walking at the time he received the accidental injuries which caused his death, instead of riding or being tra'sported by some artificial conveyance.

And, for a further assignment of error, the said plaintiffs say that the said court erred in rendering judgement for the said defendant upon the facts of the case as found by the said court as aforesaid, & that upon the said facts so found as aforesaid the said court ought to have given judgement for the said plaintiffs.

And, for a further assignment of error, the said plaintiffs say that there is error in this, to wit, that, by the record & proceedings aforesaid, it apaears that the judgement aforesaid, in form aforesaid given, was given for the said The Railway Passengers' Assurance Company, of Hartford, Connecticut, against the said Delite P. Ripley, administratrix, & James Sutherland, administrator of, &c., of Willis J. Ripley, deceased,

whereas by the law of the land the said judgement ought
49 to have been given for the said Delite P. Ripley, administratrix, & James Sutherland, administrator of, &c., of Willis J. Ripley, deceased, against the said The Railway Passengers' Assurance Company, of Hartford, Connecticut.

And the said Delite P. Ripley, administratrix, & James Sutherland, administrator of, &c., of Willis J. Ripley, deceased, pray that the judgement aforesaid, for the errors aforesaid, & other errors in the record & proceedings aforesaid, may be reversed, annulled, & altogether held for nothing; & that they may be restored to all things which they have lost by occasion of the said judgement.

ANTHONY POLLOK,
Att'y for Pl'ff in Error.

W'M ASHLEY,
Of Counsel.

(Indorsed:) Supreme Court of the United States. Delite P. Ripley, adm'x, & James Sutherland, adm'r of, &c., of Willis J. Ripley, deceased, pl't'ffs in error, vs. The Railway Passengers' Assurance Company, of Hartford, Connecticut, def't in error. Assignment of errors. Filed Aug. 31st, 1871. Isaac H. Parrish, clerk. Anthony Pollok, att'y for pl't'ffs in error.

50 THE WESTERN DISTRICT OF MICHIGAN, *ss:*

I, Isaac H. Parrish, clerk of the circuit court of the United States for the sixth *judicial*, circuit, and western district of Michigan, do hereby certify that the above and foregoing is a full, true, and complete transcript of all the papers and pleadings on file in my office, including the orders, findings, and judgement made and entered in said cause; that I have compared the same with the original files and records; that the same are true transcripts thereof and of the whole of such originals.

Witness my official signature and the seal of said court, at Grand Rapids, in said district, this 31st day of August, A. D. 1871.

[SEAL.] ISAAC H. PARRISH, *Clerk.*

(Indorsement on cover:) No. 390. Delite P. Ripley, adm'x, & James Sutherland, adm'r of the estate of Willis J. Ripley, dec'd, plaintiffs in error, vs. The Railway Passengers' Assurance Company, of Hartford, Connecticut. W. Michigan C. C. U. S. Filed 21st November, 1871.

In the Supreme Court of the United States.

DECEMBER TERM, 1872.

No. 158.

DELITE P. RIPLEY, *Administratrix, and* JAMES SUTHERLAND, *Administrator of the estate of* WILLIS J. RIPLEY, *deceased, Plaintiffs in Error,*

vs.

THE RAILWAY PASSENGERS' ASSURANCE COMPANY OF HARTFORD, CONNECTICUT, *Defendants in Error.*

Brief for Plaintiffs in Error.

I.

This case is brought, by writ of error, from the Circuit Court of the United States for the western district of Michigan, on exceptions to the finding of the district judge of said district, holding said Circuit Court. The plaintiffs in error were plaintiffs below.

Plaintiffs declared, in assumpsit, on a policy or ticket of insurance, issued by the defendant to the plaintiffs' intestate, on the 8th day of May, 1869, the material parts of which are set forth in the finding of the said district judge and are as follows:

"The Railway Passengers' Assurance Company, of Hartford, Connecticut, will indemnify the insured by this ticket, in the sum of twenty-five dollars per week, against loss of time not exceeding twenty-six consecutive weeks, while totally disabled and prevented from all kinds of business by reason of bodily injuries effected from violent and acci-

dental means, or will pay the sum of five thousand dollars to his legal representatives in the event of his death, by means aforesaid, when resulting within ninety days from the happening of the accident: *Provided*, That this insurance shall be payable only in the event of death or disability of the assured, when caused by any accident while traveling by public or private conveyance in the United States or Dominion of Canada."

With all other necessary averments, the declaration alleges that the said assured, on the said 8th day of May, while traveling by private conveyance to his home, by violent and accidental means, received bodily injuries, from the effects of which he died within ninety days from the happening of the accident, to wit, on the 15th day of said month of May. The breach is assigned in the general form; and the defendant pleaded the general issue only.

By stipulation of the parties the case was submitted to the court, without the intervention of a jury.

The facts appear in the judge's finding; and, so far as the same are material for the elucidation of the question involved, are as follows:

"The ticket was issued at Grand Haven, Ottawa county, Michigan, to Ripley, who at once set out for his home at Dalton, in Muskegon county, taking conveyance by steamer from Grand Haven to Muskegon village, where he arrived at eleven o'clock at night. From thence he proceeded on foot towards Dalton, a distance of some 8 miles. When about half the distance, and at about half-past twelve o'clock of the morning of the ninth, he was met on the highway by two men, who set upon and waylaid him; he was rendered insensible, robbed of a watch and small sum of money, but revived, and succeeded in reaching his home at about two and a half ($2\frac{1}{2}$) o'clock of the same morning. He died from the effects of the injuries thus received, on the sixth day, namely, on the 15th day of May."

Judgment was rendered against the plaintiffs, and in favor of the defendant.

The only question involved is, Was Ripley, while pursuing his journey towards his home as aforesaid, on foot, traveling by private conveyance?

The judge, as a matter and conclusion of law, found, from the facts stated, that the said Ripley was not then traveling by public or private conveyance; and for that reason only, determined the issue, and gave judgment, against the plaintiffs, and in favor of the defendant.

This question is raised by exceptions to the said finding, on matters of law, from the facts as stated and found by the said district judge, and pursuant to the act of Congress in such case made and provided.

II.

The following errors are assigned and relied upon:

1. The said district judge erred in deciding that, upon the facts of the case, the defendant, as matter of law, was not liable to the plaintiffs on the contract of insurance declared on, for the reason that the assured was *walking* at the time he received the injuries which caused his death, and was not then being carried or transported by "a vehicle or instrument of conveyance other and different from the person or thing to be conveyed."

2. The said judge erred in deciding that, upon the facts of the case, the defendant, as matter of law, was not liable to the plaintiffs on said contract of insurance, for the reason that the assured was on foot, walking, at the time he received the accidental injuries which caused his death, instead of riding or being transported by some artificial means.

3. The said judge erred in holding and deciding that, upon the facts of the case as found by him, the said judge, as aforesaid, the said assured, Willis J. Ripley, was not traveling by private conveyance, at the time he received the bodily injuries whereof he died.

4. The said judge erred in holding and deciding, as a matter of law, that, in the construction of said contract of insurance, the words "private conveyance" mean a vehicle or instrument other and different from the person assured.

5. The said judge erred in rendering judgment for the defendant, upon the facts of the case found as aforesaid.

6. The said judge erred in this, to wit, that by the record and proceedings aforesaid, it appears that the judgment aforesaid, in form aforesaid, was given and rendered in favor of the defendant, whereas, by the law of the land, the said judgment ought to have been given and rendered in favor of the plaintiffs, and against the defendant, upon the facts of the case as found by the said district judge.

III.

Every contract is to be construed in connection with the object of the parties, and the probable state of things which will exist until the object had in view is attained. Each party to a contract of insurance is presumed to have had in view, at the time of making such contract, the circumstances in which the assured was placed, and the object he thereby reasonably sought to attain. These are the surroundings of the parties, and are all to be considered in giving construction to the contract. The contract shows the assured intended to travel; and its object was to insure him indemnity in case of accident while traveling. He entered into the contract, contemplating making the journey stated, and in the manner described, in the statement of the case. In the interpretation of this contract, and for the purpose of ascertaining the intention of the parties, the court may resort to the circumstances which surround and attend the transaction, and place itself in the situation of the contracting parties. When the purpose and intention of the parties are so ascertained, that purpose and intention

will be carried into effect, if the rules of language and of the law will permit; and a party will be held to that meaning which he knew, or had good reason to believe, the other party supposed and understood the words to convey, if it can be done without making a new contract for them.

1 *Greenleaf Ev.*, sec. 277.
2 *Parson's on Cont.*, 492, 499–50.
Hasbrook v. *Paddock*, 1 Barb., 635–7–8.
Doolittle v. *Southwick*, 3 Barb., 79, 87.
Blossom v. *Griffen*, 3 Kern, 569, 571.

If there be any doubt about the meaning and intent of the parties, that construction is to be adopted which is most beneficial to the covenantee or promisee.

Marvin vs. *Stone*, 2 Conn., 781—806.
2 Kent's Com., 733.
Cocheko Mf'g. Co. vs. *Whittier*, 10 N. H., 305.

Testing the contract declared on by these rules, it is submitted that the death of plaintiffs' intestate was occasioned by injuries received in circumstances and situation within the scope of the contract, and embraced in the risks insured against.

The contract was "good for one day" only. (Page 3 of the Record.) It was made at Grand Haven, in Ottawa county, Michigan (page 10), a place about twenty-six miles distant from the home of the assured, Dalton, in the adjoining county of Muskegon. The mode of travel was by steamboat to Muskegon village, eighteen miles from Grand Haven—and thence by land, eight miles, to Dalton. The latter part of the route the assured was accustomed to travel on foot. There were no public means of transportation of any description between Muskegon and the home of the assured. The District Judge says: "But he could have procured a team to take him home." This he had never done before, nor did he now. (Page 10.) The jour-

ney from Grand Haven to Dalton by the route and mode stated could have been performed in four hours; and on its safe and entire completion by the assured, and not until then, (if within one day from the date of the contract,) the risks covered by the policy, and the liability of the defendant, would have terminated. Can any one doubt that such was the intention of the assured, or that such was the object he had in view when he purchased the policy?

The defendant, in the light of the authorities cited, and under the rules stated, must be held to know that such was his meaning and intention; and, as there is no rule of language or of law which forbids this construction, the Court should have adopted it.

The language of the contract is, "when caused by any accident while traveling by public or private conveyance in the United States or Dominion of Canada."—(Page 10.)

That Ripley was traveling when he received the injuries cannot be, and is not, questioned. But the defendant insists he was not traveling by public or private conveyance. The declaration avers (page 4) that he received the injuries while traveling by private conveyance; and the plaintiffs insist that the words "private conveyance" in the contract, naturally, reasonably, and *ex vi termini*, include the case of a person pursuing a journey, or traveling, by means of his own personal powers of locomotion: his limbs, with their muscles and tendons, bones and joints—the primitive universal "private conveyance" of man. Surely, when one performs a journey by walking, his feet and legs are his conveyance, and, unless he be a common carrier, a private conveyance.

If there be ambiguity in the words of the contract, (which is not admitted,) it must be remembered that the language was that of the defendant, framed for its purposes, carefully and deliberately. The assured had no opportunity of aiding in its preparation, of suggesting his

views as a party to it, or even of obtaining an explanation of its terms. The contract, previously printed by or for the defendant, is usually thrust through the aperture of a railroad ticket office, or on a train of cars, amid a jostling, bustling, hurrying crowd, explanation is unattainable, and revocation or modification has become impossible. In such a case Courts will not narrow and limit the meaning of the words employed, but will give them a liberal scope and comprehension.

If ambiguous language be used by a promisor, it will become elastic when construed by the Court. Words are interpreted, in such a case, "with *unusual* extent of meaning, and held to be generic rather than specific, and thus made to cover things which are collateral rather than identical."

2 *Parsons on Cont.*, 496.

In stipulationibus, quum quæritur quid actum sit, verba contra stipulatorem interpretanda sunt.—Brown's Legal Max.

Jenk. Rep., 279.

Hogg's App., 22 *Penn. St. R.*, 472, 485.

Such, also, is the rule of interpretation of the civil law. "In a doubtful matter it is not less just than safe to adopt the more liberal interpretation."

Dig. 50, 17, 192, '1.

1 *Kent's Com.*, 556.

Policies of insurance are construed liberally, and with a view to carry into effect the actual intention of the parties.

Yeaton vs. *Fry*, 5 Cranch., (S. C.) 335.

Palmer vs. *Warren Ins. Co.*, 2 Blatch., 99.

Casler vs. *Ins. Co.*, 8 Smith, (N. Y.) 427.

Am. Law Reg., vol. 8, p. 349.

If this be the rule with regard to the construction of

ordinary policies of life and fire insurance, how much greater reason is there for applying it to policies or tickets of accident insurance, which are usually issued under circumstances admitting of no deliberation or choice on the part of the insured?

Courts, in giving construction to these accident insurance policies, have never confined or limited the meaning of the words employed to their literal signification; but have invariably construed them liberally, in order to give effect to the intention of the parties, and accomplish the object reasonably sought to be attained.

In *Theobald* vs. *The Railway Passengers' Assurance Company*, 26 Eng. Law and Eq., 432, the policy was for accidents while *traveling in any class carriage* on any line of railway: the train had stopped, and the plaintiff, in stepping off the cars, slipped between them and the platform, and was injured, for which he recovered judgment. Although the plaintiff was not then traveling in the exact and literal meaning of the word, for the train had stopped —and although he was not in any class carriage, but had left the carriage and was getting on the platform of the station—yet the judgment was sustained.

"If it be conceded that the meaning of the ticket is doubtful or ambiguous, still the question must be decided for the plaintiff, as the promisor would not fail to apprehend that the promisee labored under the impression that he was indemnified, and where such is the case, the construction must be most favorable to the insured."

Brown vs. *Railway Passengers' Assurance Co.*, 45 Mo., 221.

In *Trew* vs. *Railway Passengers' Assurance Co.*, 30 L. J. Exch., 317, Cockburn, Ch. J., says:

"We ought not to give to these policies a construction which will defeat the protection of the assured in a large class of cases."

And in the case of Northrup, adm'r, *vs.* The Railway Passengers' Assurance Company, of Hartford, Conn., (this same defendant,) 43 N. Y., (4 Hand,) 516, the plaintiff's intestate, at the time of receiving the injuries which caused her death was *walking* from a steamboat landing to a railway station, a distance of about seventy rods; while so walking she slipped and fell, thereby receiving an injury which caused her death. The Court say: "It must be conceded that the injury received by the plaintiff's intestate does not come within the strict literal words of the contract of assurance." And—"The policy must be construed so as to carry into effect the intention of the parties, so far as such intention can be determined from the language used, construed in the light of well known extrinsic facts which must be presumed to be known to the contracting parties at the time of making the contract, and in reference to which it was entered into." The judgment of the C urt below was reversed, and judgment rendered for the appellant for $5,000, with interest and the costs of both Courts.

It is worthy of remark in that case, in connection with this, against the same defendant, the contract was, that the Assurance Company agreed to pay the legal representatives of the intestate $5,000, in case of death from personal injury, when caused by any accident "while traveling by public or private conveyance *provided for the transportation of passengers.*" The words just quoted in italics are not in the contract in this case, and their omission must be regarded as significant, in view of the construction claimed by the plaintiffs of the contract before the Court. In the former, the conveyance is limited; in the latter, it is absolutely unlimited. In the former, artificial, extrinsic vehicles are contemplated; in the latter, no such restriction is made; the assured has perfect liberty of

choice to use or employ any known reasonable, usual, and ordinary means of locomotion.

From what has been said it must appear that such contract of insurance is to be construed in the light of the surrounding circumstances, and with a view to effect the object sought to be attained by the assured. And if there be any doubt or ambiguity, the doubt should be solved and the ambiguous language construed strongly against the promisor and liberally for the assured.

It has been already said that the plaintiffs in error do not admit there is any ambiguity in the language of the contract, particularly in the words "private conveyance." On the contrary, it is insisted that these words plainly mean any private mode of transferring the person from one place to another. The words "while traveling by public or private conveyance" mean while *traveling* in any manner; and if the defendant in error had desired or intended to limit its responsibility to accidents occurring while the assured is traveling by means of artificial or extraneous vehicles, it should have explicitly so declared, as was done in the ticket in the case of Northrup's administrator, *supræ*.

"Conveyance" is the instrument or means of carrying or transferring anything from place to place, (*Webster;*) and such instrument or means may be natural or artificial, inherent or extraneous. There is nothing in the meaning of the word to designate the nature of the means; any instrument or means by which the person or thing is transferred is a conveyance.

These contracts embrace traveling in the "United States or the Dominion of Canada," and no merely local signification can be attached to the language employed. The meaning to be adopted is the universal, broad, and most comprehensive signification.

In one place the word "conveyance" may be under-

stood to refer only to a wheeled vehicle, and such is the fact in many places and with many persons. In another, as in the locality where this ticket was issued, the same word may imply any possible mode of transferring the person. Thus, in Northwestern Michigan, where the population is sparse, roads infrequent, and artificial means of locomotion (off the water-courses) but little used, the words "conveyance of the person" would primarily mean walking, and rarely anything else.

The orthography and derivation of the word bear out the meaning insisted upon by the plaintiffs. "Convey" is derived from *con*, (with, by, or along,) and *via*, (the way;) and not from *con* and *veho*.—*Convehere*, (to bring or carry together.)—*Webster*.

The well-established, recognized, and legitimate *use* of the word—convey—is in accordance with this meaning.

I may be permitted to refer to that well of pure English—the Sacred Writings—and there find, (John, 5:13,) "for Jesus had *conveyed himself* away, a multitude being in that place."

And to the poets, as—

> "Love cannot, like the wind, itself convey
> To fill two sails, though both are spread one way."
>
> *Howard.*

And so in ordinary language and in every-day life.

Should a Court direct its officer to "convey the prisoner to jail," no one would dream of associating with such words the idea of any instrument or means by which the transfer should be made; and the prisoner's walking to the place designated would be a literal and exact compliance with the order.

If an intruder be thus addressed, "Convey yourself from this room," he would not demur on the ground of ambiguity; and by the prompt use of his legs he would be con-

veyed beyond the reach of any extrinsic means of conveyance to be furnished by others for his exit.

It is respectfully submitted that, looking at this case from every point of view, the judgment of the Court below was erroneous, and that judgment should be rendered against the defendant, and in favor of the plaintiffs for $5,000, with interest from the 15th day of May, 1869, and costs.

GEO. GRAY,
Counsel for Plaintiffs in Error.

Delite P. Ripley, and Another, Administrators,

vs.

Railway Passengers' Assurance Co.

Supreme Court of the United States.

BRIEF OF H. C. ROBINSON,

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Supreme Court of the United States.

DELITE P. RIPLEY and ANOTHER, ADMINISTRATORS,

vs.

THE RAILWAY PASSENGERS' ASSURANCE CO.

WRIT OF ERROR TO CIRCUIT COURT FOR WESTERN DISTRICT OF MICHIGAN.

Brief of Defendants.

The transcript of record (fol. 25) finds that the defendants, for a sufficient consideration, issued a policy of insurance favorable to plaintiffs' intestate, indemnifying him against loss of time for a specified term, while disabled "by reason of bodily injuries, effected from *violent and accidental means*," and further promising as follows: "Or will pay the sum of five thousand dollars to his legal representatives, in the event of his death *by means aforesaid*, when resulting within ninety days from the happening of *the accident*, provided that this insurance shall be payable only in the event of death or disability of the assured, when caused by *any accident when traveling by public or private conveyance* in the United States or Dominion of Canada."

The circumstances of issuing the ticket, and of the death of the assured, are found (fols. 25 and 26,) to be these :—

"This ticket was issued at Grand Haven, Ottawa County, Michigan, to Ripley, who at once set out for his home at Dalton, in Muskegon County, taking conveyance by steamer from Grand Haven to Muskegon Village, where he arrived at eleven o'clock at night. From thence he proceeded on foot towards Dalton, a distance of some eight miles. When about half the distance, and at about half-past twelve o'clock of the morning of the ninth, he was met on the highway by two men who set upon and waylaid him ; he was rendered insensible, robbed of a watch and small sum of money, but revived, and succeeded in reaching his home at about 2½ o'clock of the same morning. He died from the effects of the injuries thus received on the 6th day, namely, on the 15th of May."

Two questions have arisen in the case :

1st. Was the insured "traveling by public or private conveyance," in the meaning of the policy, at the time of his injury ?

2d. Was his death caused by an accident ?

If both these questions can fairly be answered in the affirmative, then there was error in the judgment at the circuit. We submit that neither question is entitled to an affirmative answer.

No strict construction of the agreement is requested by the defendants. The rule of interpretation invoked is,—the discovery of the meaning intended by both parties, the common ground for the meeting of minds.

It is a general contract, and has therefore a general significance.

The opinion of the learned Judge at the circuit expresses the rule of interpretation in a just, accurate and complete manner. (fols. 28 and 29.)

I.

In considering the first branch of the case, we have the guidance of but few authorities, either as immediate precedents or forcible analogies.

We must look chiefly at the case itself in our investigation.

We submit that the contract is obviously not designed to insure parties while traveling on foot.

It can be said in no sense that a pedestrian is traveling by any conveyance.

He is traveling automatically.

A *conveyance* (in its sense of an instrument to overcome the properties of inertia and gravity, which is, of

course, the sense in which it is used in this contract,) is defined by the lexicons to be: "The instrument or means of passing a thing from place to place."

Webster Un. Dict.—"Conveyance."

To declare the thing "passed from place to place," identical with the vehicle "passing" it, is a solecism.

Such an automaton is inconceivable. It involves activity and passivity in the same thing, at the same time, and at the same juncture, which all cannot be.

Such a proposition runs very close to an attempt at solving the old problem in natural philosophy,—how to pull one's self over the fence by the straps of one's own boots.

For Weston, the pedestrian, in one of his 1,000 miles trips, or Sergeant Bates, in his American flag-bearing journey, to claim the indemnities of such a contract as this, would be only reducing the construction insisted on by the plaintiffs at the circuit to absurdity, by carrying it farther on its trip towards its logical extreme.

To give this contract such a meaning would avail to make an insurance policy against the risks of traveling an universal accident policy, if so be the ticket-holder met his misfortune when he was not in his bed or his chair.

Nor is it an important fact that the insured had not yet reached his home when he met with violence.

The defendants were not common carriers with insurers' liability from one geographical point to another.

Their contract is terminated by a measure of time and not of space.

When Ripley forsook the steamer at Muskegon Village, he completed his travel by conveyances; he then threw away the shield of this policy and pursued his journey on foot and at his own risk.

Whether the public conveyances extended toward his home beyond this village, does not appear from the record; that he could have procured a private conveyance, is found. (fol. 26.)

Had he desired to prolong the protection of this policy he could have done so. He preferred to be his own insurer from that point.

The perils of foot travel in unpopulous districts, at midnight, are entirely out of the scope and design of the policy. For such risks and hazards and openings to fraud, the inconsiderable premium paid by the assured would make a most insufficient consideration. An adequate premium could not well be estimated, and, when arrived at, it would become an imposition upon persons who prudently desire the protection of these associations against the perils of travel.

The English case,—

Theobald v. *The Railway Pass. Ass. Co.*
10 *Ex.* 44, 26 *E. L. & Eq.*, 432,

upon the whole, confirms the construction for which we contend.

The defendants had undertaken to insure the plaintiff against personal injury, accident, and death, "from railway accident whilst traveling in any class carriage on the line of railway in Great Britain or Ireland."

Mr. Theobald was traveling in a railway carriage to a certain place, and on the arrival of the train at the station there, and after it had stopped, Mr. T., in stepping out of the carriage, without any negligence on his part, slipped off the iron step, whereby he sustained an injury.

The court, while declining to lay down any general rule as the result of their conclusions, held that the plaintiff had not ceased his connection with the railway carriage, and that, as a passenger, he must necessarily remain connected with the "railway, the carriage, and the machinery of motion, until the time he has, as it were, safely landed from the carriage, and got upon the platform."

"The accident is attributable to his being a passenger on the railway; it arises out of an act immediately connected with his being such a passenger."

The general nature of the contract is similar to the one at bar, and, if we are right in claiming that the conveyances mentioned in this policy must be vehicles other than and different from the legs of the assured, the suggestion of the court in the Theobald case of the necessity

of a connection between the assured and the machinery of motion, is applicable as well to Ripley's case as to Theobald's. The prepositions "in" and "by" are synonymous for the purposes of the reasoning of the Chief Baron.

Had Mr. Theobald alighted safely upon the platform, and, in walking upon the railroad track (as he could not under English law, but might have done in this country,) to his home, one mile or six miles distant, been run over by the cars, his case would have been a railway accident, but the reasoning of the court would have prevented his recovery.

As Ripley confessedly swung clear of all connection with public conveyances at Muskegon Village, this authority would seem to be very strong against the propriety of any claim of the plaintiffs' to recover on the language of the policy, "by *public* conveyances."

A case arose in the State of New York between the representative of one Mrs. Northrup and the present defendants, in which the assured held a ticket substantially like the one under discussion, its terms being insurance against "any accident while traveling by public or private conveyances provided for transportation of passengers."

The accident occurred to the insured "while she was going on foot over the customary route from a steamboat landing to a railway station seventy rods distant, and she being at the time in the prosecution of, and for the purpose of continuing by rail the journey with reference to which the insurance was taken."

The suit was decided by the Supreme Court, and the opinion was then delivered by a very able judge, in favor of the Defendants.

2 *Lansing*, 166.

Upon appeal, a majority of the Court of Appeals held that the assured was traveling by *public conveyance*.

43 *N. Y.* 516.

If the reasoning of the case be sound, and its result is a safe precedent for this most learned tribunal, it has no immediate force in this suit, because the whole gist of the opinion is, that the trip from the boat to the train, being at intermediate stations, was such a necessary and proper incident to the railway and steamboat carriage as to be part of it,—being in obvious conflict with the conclusions fairly inferable from the Theobald case.

But to say that a pedestrian expedition of eight miles beyond and outside of the public route is an incident to transportation by public conveyance, is at war with the reasoning of the Court of Appeals; because that reasoning is expressly and wholly founded upon and buttressed by the fact that the incidental foot passage from wharf to station was for the purpose of continuing the journey by rail, which journey by rail was confessedly protected. The argument of the opinion is, that the passage in dispute is analagous to getting from one train to another in exchanging cars.

It is also to be observed that no sort of notice is given to any claim of travel by *private* conveyance, which it is

apparent from the language of the opinion of Judge Withey, was the only claim made in the plaintiffs' behalf at the trial below.

As to the merits of the New York case, it can hardly escape attention that the opinion is somewhat peculiar.

Abounding in historical and geographical statistics not elsewhere mentioned in the record of the case, it stands, so to speak, and to speak with becoming reverence, upon a logical tripod, viz.: two presumptions and one *ipse dixit*, and for the latter no reasons are assigned.

1st. The opinion announces (p. 519) that the contract "must be construed in the light of well-known and extrinsic facts which *must be presumed* to have been known to the contracting parties.

One fact of this character, very important in the present case, is that of the frequent change required from one train of cars to another, at intermediate stations, upon the same journey."

2d. (p. 520). "*The presumption* is that the railroad trains and the steamer run in connection the same as the ferry boat from New York to Jersey City with the Erie trains."

3d. (p. 520.) "She pursued the same course that the great majority of passengers did. *This she had a right to do under the contract.*"

Whatever may have appeared in the Northrup case or been assumed as to the intention and knowledge of the parties, we respectfully and earnestly submit that a corporation in the New England States, with agents selling their tickets for the security of the traveling public and for the furtherance of the company's business, will not be presumed to know the proposed course of travel of the ten thousand strangers who daily appear before the wickets of Insurance agencies throughout the land, and ask for travelers' "accident policies."

This case finds no knowledge or intentions by either party as to the use to be made of this contract. It was only to be used fairly.

Which one of the many opportunities for travel open to him from Grand Haven the assured should choose to undertake, was free to his own choice; in any one of them he was guarded by his policy, so long as he traveled by public or private conveyance, in none was he thus guarded when he forsook conveyances and became a pedestrian.

As is said by Judge Withey, "this is not a general accident policy" (fol. 28). Abundant opportunities are offered to the public to procure insurance policies or tickets, in which the nature of the accident guarded against is not restricted to the perils of travel. Of course such tickets bear higher rates of premium than the ticket in suit. For such a ticket Ripley has never paid. He preferred a limited accident policy. and to pay only such premium as a limited policy required.

II.

We submit that the death was not accidental.

Neither in accurate definition, nor in the construction of the courts, can an event, which is the direct result of human will, be called an accident.

Beginning with the reports and text books: in

Mallory v. *Travelers' Ins. Co.*, N. Y. Sup. Ct., 2d Dist., Feb. 1870,

case not yet reported; cited in Bliss on Life Ins. at p. 684 n., an accident is defined to be "that which takes place without any intelligent or apparent cause, without design, and not according to the usual order of things."

That discriminating author, Geo. Bliss, jun., in his recent treatise upon Life Insurance, accepts the foregoing definition; and also in his initial definition, writes that an accident is "the happening of an event without the aid and without the will of the person by whose agency it was caused."

Bliss on Life Ins., p. 684.

Bouvier's definition is,—

"The happening of an event without the concurrence of the will of the person by whose agency it was caused."

1 *Bouvier*, 45 §.

It is to be noticed that the non-concurrence of will, necessary to make an event accidental, is on the part of the agent, and has no relation to the will of the person affected by it.

In the many suits in which the nature of an accident has come directly or indirectly under the analysis of American and English courts, we submit that no instance can be found in which the word is admitted to cover any occurrence guided by the human will, excepting that the very learned judge at the circuit in the present cause volunteered such an opinion, admitting that the question was not "free from doubt," (fol. 31.)

Had the responsibilities of the issue turned upon his opinion of this point, the conclusion of the learned judge would have at least been reached after prolonged thought.

The regular and irregular laws of nature may enter into the elements of causation and there may be an accident, but when the sovereign will of man enters, the occurrence can no longer be called an accident.

Nor is it material that the event is undesigned as far as the victim is concerned, it is not even to him an accident; it is a blow, an assault, a thrust, a wound, death, murder, but never a casualty.

The dictionaries give the same meaning to the word for which we argue.

"An event which proceeds from an unknown cause or is an unusual effect of a known cause and therefore not expected." "That which takes place without an efficient intelligent cause and without design."

Webster.—"Accident."

"An event proceeding from an unknown cause or happening without the design of the agent."

Worcester.—"Accident."

And so the authors:

"Till accident or purpose bring you to it."

Troil. and Cress. Act. IV, Sc. 5.

"Or thy precedent services are all
But accidents unpurposed."

Ant. and Cleop. Act. IV, Sc. 12.

It is noticeable that the word is not to be found in King James' version of the Holy Scriptures.

Is it because that volume recognizes nothing as occurring without will?

The very laws of nature, in their routine of results, are always inspired with the continual inbreathing of an infinite will. Laws are but the forthwith utterances of an Almighty being.

The very word has no place in the vocabulary of a philosophy, which excludes all ideas of chance and casualty.

It cannot be denied that certain disasters are loosely termed accidents by exceptional authors, chiefly newspaper itemizers.

But an analysis will show that this is generally true in cases of events, which are ostensibly accidents, altho' perhaps really the result, usually indirectly, of will and design.

It would be unfair, however, to call such an use of language general or accepted.

And to construe a contract of this character by the false habits of the grossly inaccurate, would hardly be safe in courts of law.

The transcript of record shows that the suit was adjudged below,

Dec. 12, 1870 (fol. 24);

that the decision of the learned judge was rendered

Monday, Dec. 13, 1870 (fol. 25);

that on the 13th of Dec., 1870, the plaintiffs came and filed exceptions to the said findings and judgment of the court in the words and figures set out in fol. 33;

That the bill of exceptions (folios 34-45) "was not prepared and presented to the said judge until after the expiration of the term when said case was tried, no time having been granted within which to present and settle the same"; and

"That the defendant then objected to the signing and settlement of the same"; and that "thereupon said judge, at the request of the said counsel for the plaintiff, did put his seal to this bill of exceptions on the 13th day of July, A. D., 1871, subject to the objections made as aforesaid by the counsel for the defendant." (Folios 44-45.)

We submit that the bill of exceptions, in the absence of agreement or of a peremptory allowance of it by the judge, came too late to become a part of the record.

HENRY C. ROBINSON,

Counsel for the Defendant.